

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

CHRISTOPHER HARRIS, II,

Plaintiff,

v.

STEVE MALEK,

Defendants.

Case No. 16-cv-10755

Honorable Thomas L. Ludington
Magistrate Judge Patricia T. Morris

**ORDER ADOPTING REPORT AND RECOMMENDATION, GRANTING MOTION TO
DISMISS, DENYING REMAINING MOTIONS AS MOOT, AND DISMISSING
PLAINTIFF’S COMPLAINT**

On March 1, 2016, Plaintiff Christopher Harris, II, filed a suit against Defendant Steve Malek. ECF No. 1. Harris alleged that he experienced racial and religious discrimination while incarcerated at Macomb County Jail. Although Harris points to several examples, his arguments center on Defendant’s denial of his request for a special religious diet. The case was referred to Magistrate Judge Patricia Morris. ECF No. 8. On June 2, 2016, Harris filed two motions for relief wherein he alleged that he was assaulted by prison officials and sought to be relocated. ECF No. 15, 16. On June 14, 2016, Harris filed a third motion for relief wherein he asserted that “this entire facility has violated by human, civil, and Constitutional right’s [sic].” ECF No. 18 at 8–9. On August 23, 2016, Harris filed a motion for declaratory injunctive relief, a motion for a mediation hearing, and a motion for punitive and compensatory damages and summary judgment. ECF No. 24, 25, 26. On January 4, 2017, Defendant Malek filed a motion to dismiss. ECF No. 32. In the motion, Malek explained that he is a “civilian volunteer chaplain” at the jail

and thus “is not a state actor whose acts may form a predicate for a constitutional deprivation claim.” *Id.* at 1–2.

On February 8, 2017, Judge Morris issued a report recommending that Malek’s motion to dismiss be granted, Harris’s motions be denied as moot, and the complaint dismissed. Judge Morris explained that Malek might be a state actor even though he is a volunteer chaplain, but concluded that the complaint did not establish a link between “the alleged violations of Plaintiff’s religious rights, such as being denied dietary restrictions, and any action taken by Defendant Malek.” *Id.* at 7. Judge Morris concluded that Harris had failed to state a viable claim against Malek. Alternatively, Judge Morris reasons that Harris’s pending motions should be denied because all of them seek relief for actions taken by non-defendants.

Although the Magistrate Judge’s report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, neither Plaintiff nor Defendant filed any objections. The election not to file objections to the Magistrate Judge’s report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal. Because Harris’s complaint does not state a viable claim against Malek, the complaint will be dismissed. Because the complaint will be dismissed and none of Harris’s pending motions combine to state a claim against Malek, they will be denied as moot.

Accordingly, it is **ORDERED** that the magistrate judge’s report and recommendation, ECF No. 34, is **ADOPTED**.

It is further **ORDERED** that Defendant Malek’s motion to dismiss, ECF No. 32, is **GRANTED**.

It is further **ORDERED** that Plaintiff Harris's pending motions, ECF No. 15, 16, 18, 24, 25, 26, are **DENIED as moot**.

Dated: March 16, 2017

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on March 16, 2017.

s/Michael A. Sian
MICHAEL A. SIAN, Case Manager